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October 27, 1993

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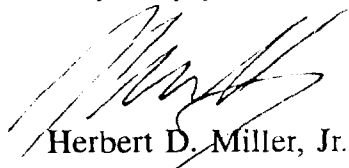
William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D. C.

Dear Mr. Caton:

Transmitted herewith, on behalf of EZ Communications, Inc., an applicant in MM Docket Number 93-88 for renewal of the license of radio station WBZZ(FM), in Pittsburgh, Pennsylvania, is its Motion to Enlarge Issue with respect to the mutually exclusive applicant, Allegheny Communications Group, Inc.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Herbert D. Miller, Jr.

enc.

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BEFORE THE

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Federal Communications Commission
Washington, D. C. 20554

OCT 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of

EZ Communications, Inc.

For Renewal of the License of FM Radio Station
WBZZ (FM) on Channel 229B at Pittsburgh,
Pennsylvania

Allegheny Communications Group, Inc.

For a Construction Permit for a New FM Broadcast
Station on Channel 229B at Pittsburgh, Pennsylvania

MM Docket Number
93-88

To: Honorable Edward Luton
Administrative Law Judge

MOTION TO ENLARGE ISSUES

EZ Communications, Inc., (EZ), the applicant for renewal of the license of radio station WBZZ(FM), in Pittsburgh, Pennsylvania, files herewith, by its attorneys, its Motion to enlarge issues with respect to Allegheny Communications Group, Inc. (Allegheny), a mutually exclusive applicant for authority to construct a new FM station in Pittsburgh.

EZ is also an applicant for Commission consent to the acquisition of radio station WQKB(FM), in New Kensington, Pennsylvania (File No. BALH-93090GI). On October 18, 1993, Allegheny filed a Petition to Deny that application. A copy of Allegheny's Petition is provided in Attachment A to this Motion. EZ's Opposition is provided in Attachment B to this Motion. For the following reasons, the Allegheny Petition to Deny is abusive of the Commission's processes, and requires the specification of an abuse of process issue in this proceeding.

I. The Allegheny Motion Misrepresents That Allegheny's Allegations Have Not Been Considered by the Commission.

On June 28, 1991, Allegheny filed a Petition to Deny the present license renewal application for WBZZ. A copy is available in the docket of this proceeding. EZ filed an opposition, a copy of which is also available in the docket of this proceeding. By *Hearing Designation Order (HDO)* released on April 5, 1993 (DA 93-361) **all** of Allegheny's allegations and arguments were rejected. Allegheny sought, and was refused, certification of the *HDO* to the Commission. Allegheny then filed an unauthorized application for review of the *HDO*, which remains pending.

Allegheny's October 18, 1993 Petition to Deny the WQKB assignment application is a repetition of its 1991 Petition to Deny the WBZZ license renewal application. However, Allegheny nowhere so much as mentions that it previously presented the identical allegations and arguments, or that they were previously rejected. Indeed, Allegheny asserts the contrary:

"To date the Commission has failed to consider the impact of this flagrant case on the qualifications of EZ, but the statutory requirements relating to the consideration of this assignment application compel consideration of this serious matter at this time."
(Allegheny October 18, 1993 Petition. p. 6).

That is false, and Allegheny knows very well that it is false.

II. Allegheny's October 18, 1993 Petition to Deny Abuses the Commission's Processes.

The Allegheny October 18, 1993 Petition to Deny seeks to delay grant of the WQKB assignment application on the same grounds which it previously advanced unsuccessfully for denial of the WBZZ license renewal application, and misrepresents that its arguments and allegations have never been considered by the

Commission. Its petition serves no legitimate purpose at all, and is simply dilatory and obstructionist.

Allegheny's petition, and particularly its misrepresentation noted above, would abuse the Commission's processes in any case. However, the abuse is exacerbated here **because Allegheny did not even have standing to file it.** Allegheny does not allege that any of its principals reside in or near New Kensington or that any of them even listen to WQKB. Nor does Allegheny allege any economic or other cognizable interest in support of its claim to standing. Nor does Allegheny claim that it, or any of its principals, suffered injury on account of the substantive conduct alleged in the petition. Instead, Allegheny asserts that it has standing to file its petition on the **sole ground that it is an applicant here,** in the WBZZ renewal proceeding.¹ Allegheny cites no authority for the proposition, and the law is clear that there is none.

The Commission has long, and consistently, held that mere status as an applicant in one context is insufficient to confer standing in another context, see, e.g., *Theodore Mallyck and Allaun Corp.*, 9 RR 2d 550 (1967); *WIBF Broadcasting Co.*, 16 RR 2d 263 (1969). In *WIBF, Broadcasting Co.*, *supra*, CATV franchisees opposed a television assignment application and alleged that they had standing to do so because the existing license had filed oppositions to their certification and other requests pending at the Commission. The Commission observed,

¹ Allegheny contends that it is challenging EZ's licensee qualifications in the WBZZ license renewal proceeding, and refers in this connection to its pending application for review (Allegheny Petition, p. 2). However, even in that context, Allegheny fails to disclose that its thus far unsuccessful challenge in the renewal proceeding has any relationship to the subject matter of its Petition to Deny the WQKB application.

"In a sense, petitioners' status is akin to that of an applicant who seeks to participate in proceedings involving a facility other than the one he has applied for. It is established that a mere applicant does not have standing to participate in proceedings on another application on the basis of a claim that he is in competition. *Mansfield Journal Co. v. FCC*, 84 US DC 341, 173 F2d 656. The pendency of petitioners' CATV petitions before the Commission underscores the fact that petitioners are as yet only applicants." (16 RR 2d at 266, n. 2).

Allegheny's abuse of the Commission's processes, for no better reason than to delay grant of the WQKB assignment application, warrants its own disqualification here.

In *KQED, Inc.*, 88 FCC 2d 1159 (1982), the Commission decided that it did not necessarily constitute an abuse of process for an entity with standing to raise for a second time matters it had raised in an earlier licensing proceeding.

The Commission observed:

"In dealing with allegations of abuse of its processes, the Commission must strike a delicate balance between protecting the public's right to participate in its proceedings . . . and its own duty to protect the public interest by not allowing the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests." *United Church of Christ v. F.C.C.*, 359 F.2d 994, 1005 (1966). The Commission has recognized that every application is subject to the filing of a petition to deny and that "even though the challenged applicant is undoubtedly put to extra time and expense in defending his application, such burdens are an inseparable part of the statutory scheme under which the applicant seeks his authorization" *Radio Carrollton*, 69 FCC 2d 1139, 1149 (1978). Thus, a party alleging that a petition to deny is an abuse of the Commission's processes must make a strong showing that the petition is "captious or purely obstructive." (88 FCC 2d at 1167).

Despite its aversion to the filing of repetitive claims (*Alascom, Inc.*, 4 FCC Rcd 7447, 7452 (1988), the Commission concluded that "the petitioning party raised a legitimate public policy question **that it was entitled to raise** in the subsequent proceeding despite the fact that it had been raised as well in the earlier proceeding." (*Alascom, Inc.*, *supra* at 7452). Here, in stark contrast, Allegheny lacks

standing and was not entitled to file any petition to deny the WQKB application. And it certainly was not entitled to conceal the facts that it had raised its concerns earlier and that they had been resolved adversely to it. *A fortiori*, Allegheny was not entitled to attempt to mislead the Commission by contending that its allegations and arguments had never been passed upon.

Although Allegheny has no cognizable interest at all in whether the WQKB license is permitted to be assigned to EZ, its captious and untruthful Petition to Deny necessitated a response by EZ and will inevitably delay Commission action on the application. It can have no other purpose.

The *HDO* in this proceeding rejected EZ's claims that the Allegheny application is a sham, concocted by counsel as one more in a long series of sham applications filed for the purpose of extorting settlements from renewal applicants. Despite its own finding that Allegheny's counsel had done just that in another proceeding, the Commission declined to attribute counsel's improprieties to Allegheny or even consider them as having any bearing on Allegheny's intentions (*HDO*, ¶25). While EZ takes issue with this position, it will not attempt to reargue it here. However, we submit that the **present** action of Allegheny speaks for itself, and that unless the Commission is prepared to allow the sort of abuse evidenced by Allegheny's WQKB petition to continue indefinitely, it is time to take steps to make it stop. The mere rejection of Allegheny's sham petition to deny the WQKB application, months from now, will not have that result, and the injury to EZ resulting from the necessary delay in processing its application -- which was Allegheny's objective all along -- will already have occurred.


In these circumstances, the following issues should be specified in this proceeding:

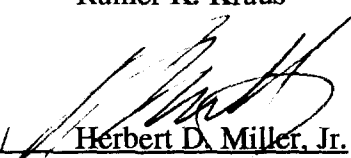
To determine whether Allegheny Communications Group, Inc. abused the Commission's processes by filing, despite its lack of status as a party in interest, a Petition to Deny the application for Commission consent to the assignment of radio station WQKB to EZ Pittsburgh, Inc., in which Allegheny falsely claimed that its allegations had never been resolved by the Commission.

To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Allegheny is qualified to become a Commission licensee.

Respectfully submitted,

EZ Communications, Inc.

By  /s/ Rainer K. Kraus
Rainer K. Kraus

By  /s/ Herbert D. Miller, Jr.
Herbert D. Miller, Jr.

KOTEN & NAFTALIN
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WASHINGTON, D. C. 20036

Its attorneys

October 27, 1993

**ATTACHMENT A TO
MOTION TO ENLARGE ISSUES**

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In re Application of)
Pittsburgh Partners, L.P. Assignor)
and)
EZ Pittsburgh, Inc., Assignee)
For Consent To Assignment)
of License of)
FM Broadcast Station WQKB,)
New Kensington, PA)

File No. BALH-930901GI

To: The Commission

PETITION TO DENY

**ALLEGHENY COMMUNICATIONS GROUP,
INC.**

Morton L. Berfield
Cohen and Berfield, P.C.
1129 20th Street, N.W., # 507
Washington, D.C. 20036
(202) 466-8565

Its Attorneys

Date: October 18, 1993

SUMMARY

EZ Communications, Inc., the ultimate licensee of FM broadcast station Pittsburgh, PA, is seeking to acquire a second station (WQKB) in the Pittsburgh market. Petitioner is challenging EZ's pending WBZZ renewal and has raised basic qualifications issues relating to operation of WBZZ.

The most serious of the allegations arise from an adjudicated case of sexual harassment and discrimination at WBZZ, compounded by a settlement--never submitted by EZ to the Commission--wherein the complainant based on the sexual harassment and to refrain not only from any further filings with the Commission but also required to resist any attempt by the Commission or others to obtain information, even going to the point of resisting a valid Commission subpoena. The sexual harassment and discrimination and abuse of process matters bear directly on EZ's qualifications to operate or own a second station in the very market where the misconduct occurred.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In re Application of)
Pittsburgh Partners, L.P. Assignor)
and)
EZ Pittsburgh, Inc., Assignee) File No. BALH-930901GI
For Consent To Assignment)
of License of)
FM Broadcast Station WQKB,)
New Kensington, PA)

To: The Commission

PETITION TO DENY

Allegheny Communications Group, Inc. (Allegheny), by counsel, hereby petitions to deny the above-referenced application for consent to the assignment of license of FM broadcast station New Kensington, PA. The petition is filed pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, and Section 73.3584(a) of the Commission's Rules. The application was accepted for filing in a Public Notice (Report No. 15622, P. 5) released September 16, 1993, and the subject Petition is thus timely filed.

I. Petitioner Has Standing

The proposed assignee, EZ Pittsburgh, Inc., ultimately a wholly-owned subsidiary of EZ Communications, Inc., is the

licensee of station WBZZ(FM) Channel 229B, Pittsburgh, PA, whose application for renewal of that license (BRH-91040162) is pending before the Commission in MM Docket No. 93-88. Allegheny has on file a timely mutually-exclusive application (BPH-910628MC) for Channel 229B at Pittsburgh which application is consolidated for hearing in Docket No. 93-88. A grant of the subject application, which can only be made under the statute (Sections 310(d) and 308) if the proposed assignee is found to be fully qualified and the assignment to be in the public interest. Thus, a grant of the assignment application would injure Allegheny, which is contending in the renewal proceeding that EZ should be disqualified. See Allegheny's May 10, 1993 Motion For Leave To File Application For Review and Application For Review. Moreover, in the renewal case EZ is contending (See EZ Exhibit No. 11 in Docket No. 93-88) for a diminution in the substantial diversification demerit which attaches to fact that EZ already programs WQBR, which is in the Pittsburgh market, pursuant to a Local Marketing Agreement and now proposes to become its licensee. A grant of the subject assignment application would thus bolster EZ's comparative contention, to Allegheny's detriment. Allegheny is clearly a party in interest to the subject assignment application.

II. EZ's Sexual Harassment and Discrimination Misconduct

Attachment A hereto is an arbitration opinion and award against EZ, arising out of misconduct concerning a former female employer at WBZZ, Ms. Elizabeth Randolph. Attachment B is an Opinion and Order in The United States District Court For The Western District of Pennsylvania affirming the arbitration decision, which has become final.

The adjudicated facts as detailed in the arbitration decision disclose the following:

That for a period of two years, Ms. Randolph, who was the News Director at WBZZ, was subjected to on-air comments from WBZZ announcers that Ms. Randolph was a promiscuous person, that she had oral sex and intercourse with large numbers of people, that she was mentally unstable and had sexually transmitted diseases, that she was having sex with a number of the Pittsburgh Penguins as well as members of the U.S. Marine Corps, and that she knows the hotline numbers for the Center for Disease Control by heart;

That these lewd and derogatory remarks occurred on-the-air and that Ms. Randolph was subjected to such degradation as a condition for retaining her employment;

That WBZZ management was aware of the on-going seriousness of the situation and had in effect sanctioned the misconduct;

The arbitrator found that the final remarks made on WBZZ were so egregious as to justify Ms. Randolph's leaving WBZZ were as follows:

"My wife goes to the same hairdresser that Liz Randolph goes to."

"Oh, she does?"

"Yeah, she does."

"Did you know that Liz Randolph has a tattoo on her forehead?"

"Oh yeah, what does it say?"

"It says, 'Let go of my ears, I'm doing the best I can.'"

The arbitrator ruled that there was no question that this "joke" alludes to the performance of oral sex.

The arbitrator's particularly telling summation (Opinion, Page 12) was as follows:

"However, I find that the banter/interplay the grievant was subjected to (as detailed in the Background section of this opinion) goes well beyond anything that could even remotely be considered part of one's job requirement. The jokes and suggestive remarks that were directed to her were lewd, offensive, sophomoric, in bad taste and beyond anything that an employee should have to be subjected to--even if they are part of an "entertainment vehicle". Fortunately or unfortunately (depending on one's perspective) the First Amendment protects such forms of expression from censorship. Constitutional protections, however, do not mean that an individual of reasonable sensibilities must be unwillingly bombarded or subjected to such forms of free speech, at least not as a mandated job requirement or within the confines of one's work environment. I find a parallel exists in this situation with circumstances that precipitated and are now governed by the Federal Government's Sexual Harassment Laws. An employee no longer has to put up with a hostile work environment that is created on the basis of sex, be it in the form of jokes, comments, suggestions, touching, etc."

This adjudicated, WBZZ misconduct constituted egregious sexual harassment and discrimination. To reward EZ with a

second license in the very market where the misconduct occurred would make a mockery of the requirement that there be an affirmative finding that the assignment would serve the public interest.

The Commission has a broad Equal Employment Opportunity policy under which:

broadcast stations are prohibited from discriminating on the basis of race, color, religion, national origin, or sex and are required to carry out a continuing program designed to foster equal opportunity in all aspects of their employment policy and practice. (emphasis added)

Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Rules, 2 FCC Rcd 3967, 63 RR 2d 220, 222-223 (1987) (emphasis added). The misconduct of EZ described in the arbitrator's opinion falls well within the scope of conduct prohibited by that policy. The Commission has recognized that sexual harassment is a form of discrimination. In Atlantic City Community Broadcasting, Inc., 8 FCC Rcd 4520 (1993), affirming in pertinent part 6 FCC Rcd 925, 68 RR 2d 1419 (Rev. Bd. 1991), the Commission recognized that a lawsuit that resulted in a finding of sexual harassment was a "discrimination suit". The arbitrator's opinion, as quoted above, makes clear that there is a federal public policy prohibiting sexual harassment which arises from

"...a hostile work environment that is created on the basis of sex, be it in the form of jokes, comments, suggestions, touching, etc."

In addition, it seems clear that the WBZZ sexual harassment contravened Commission Rule 73.2080(b)(4) of the Commission's Rules requiring all broadcast licensees to conduct:

"...a continuing program to exclude all unlawful forms of prejudice or discrimination based upon...sex from its personnel policies and practices and working conditions...(emphasis added).

Here, Ms. Randolph was subjected to WBZZ prejudicial and discriminatory practices and working conditions based upon her gender.

To date the Commission has failed to consider the impact of this flagrant case on the qualifications of EZ, but the statutory requirements relating to the consideration of this assignment application compel consideration of this serious matter at this time. Any other result would place the Commission in dereliction of its statutory responsibilities.

III. EZ's Abuse of the Commission's Processes

The consequences of the WBZZ misconduct concerning Ms. Randolph has resulted in a serious abuse of the Commission's processes. Attachment C hereto is an April 27, 1989 letter from Ms. Randolph to the Commission which she stated would

"...serve as formal notice regarding various acts of sex discrimination practiced by EZ Communications, Inc., the owner and operator of WBZZ-FM (Pgh., PA). I am also requesting that this letter be made part of the formal record in WBZZ's Applications Renewal Request."

Ms. Randolph also sued EZ Communications and its employees in the Court of Common Pleas, County of Allegheny, Pennsylvania for defamation, intentional infliction of emotion distress, and invasion of privacy (Case No. GD88-02730). On February 14, 1990, the jury hearing the case entered a verdict in favor of Ms. Randolph and against EZ on the defamation and invasion of privacy counts and against Jefferson and Quinn on all three counts.¹ The jury awarded damages of \$694,204, which was slightly reduced by the Judge.

Ms. Randolph also filed a complaint with the Pennsylvania Human Relations Commission alleging violations of Pennsylvania law prohibiting sex discrimination. After receiving a right to sue letter from that agency, she commenced a second action in Pennsylvania state court (Case No. GD89-22010).

On May 24, 1991, EZ and Ms. Randolph entered into a settlement with respect to the state court actions - the first action, which was on appeal, and the sex discrimination case, which was still pending before the trial court. Attachment D to this petition is a declaration from Lewis I. Cohen explaining his attempts to obtain information about the

¹ The Court entered a compulsory nonsuit on the intentional infliction of emotional distress count with respect to EZ.

settlement with excerpts from the transcript of a hearing concerning the settlement.

At the hearing, the Judge noted:

"that this settlement encompasses the plaintiff withdrawing their letter of inquiry with the FCC.

"Further, the plaintiff agrees that she will not file a complaint with the FCC. She will not assist anybody in filing a complaint with the FCC. She will in no way directly or indirectly assist anybody in filing a complaint.

"Further, should she be subpoenaed, in the unlikely event some party that we don't know about files a complaint, she will refuse to testify on the grounds that the Court Order in this present case prohibits her; and, it is understood that if that Order doesn't prevent her, that that will not be a violation of this agreement.

"In other words, she will go as far as refusing to testify and saying that you'll have to get approval from Judge Musmanno who will not give approval. If somehow I'm overruled by some higher court, then understand that that's not a breach of the agreement. She has given her assurance that she will not do anything voluntarily in any way to cause you a problem with the FCC. I mean I don't know how much broader I can make it other than that."

EZ never submitted the settlement agreement to the Commission for its approval. It should be noted that settlement occurred May 24, 1991, just a few weeks before the deadline (July 1, 1991) for the filing of Petitions To Deny or complaints against the then-pending WBZZ renewal application.

It is thus apparent that EZ intentionally structured a settlement designed to silence Ms. Randolph and to conceal information from the Commission. Thus, EZ paid Ms. Randolph to (1) withdraw her pending complaint with the Commission, (2)

refrain from filing further pleading challenging EZ's qualifications, and (3) preclude her from testifying before the Commission, even in the face of a valid subpoena issued by the Commission. EZ was understandably concerned that if the sexual harassment were fully considered by an informed Commission it would jeopardize the WBZZ renewal.

It in fact is obvious that a principal if not primary purpose of the settlement was to obviate potential adverse impact of the adjudication on EZ's renewal application. Thus, the jury verdict was entered on February 14, 1990. No settlement occurred for over a year until shortly prior to the July 1, 1991 deadline for filing competing applications and petitions to deny. Moreover, the settlement occurred only shortly after the release of public notice of the adoption of Character IV which at least served to create uncertainty as to whether the Commission would view the defamation adjudication as irrelevant non-FCC misconduct. Report No. GN-73, released May 9, 1991 (Attachment E hereto).

The actions of EZ in obstructing the ability of both interested parties and the Commission to obtain information potentially relevant to its pending renewal application constitutes a clear abuse of the Commission's processes. The Commission's ability to assess whether the grant of an application would be consistent with the public interest standard prescribed by Section 309(a) of the Act is necessarily dependent on its ability to receive information

from interested members of the public or to obtain information through its own investigative and hearing processes. There can be no more fundamental abuse of the Commission's processes that for an application to attempt to obstruct both sources of information.

It is well-settled that it is an abuse of process for a party to attempt to induce, entice, coerce or otherwise improperly influence a witness or prospective witness in a Commission proceeding. Chronicle Broadcasting Co., 19 FCC 2d 240, 16 RR 2d 1014 rev. denied 23 FCC 2d 162, 19 RR 2d 204 (1970) (Chronicle); Harvit Broadcasting Corp., 35 FCC 2d 94, 24 RR 2d 352, 356-57 (Rev. Bd. 1972); Kaye-Smith Enterprises, 98 FCC 2d 675, 56 RR 2d 252, 258 (Rev. Bd. 1984). It is clear that EZ has both induced and coerced Ms. Randolph in an egregious manner. Thus, she has been paid not to testify even if subpoenaed by the Commission, subject to enforcement by the contempt power of a state court.

This abusive tactic is compounded by EZ's action in procuring the sealing of the record concerning the litigation. This tactic could have no purpose other than obstructing Commission and public inquiry into this matter. Thus, as reflected in Mr. Cohen's Declaration, the record was previously publicly available. Indeed, the sealing occurred well over a year after the trial. The sealing accordingly does not serve to maintain the confidentiality of matters that were never public knowledge. It merely operates to obstruct

documentation at this juncture of matters long known to the public.

The foregoing actions are further abusive in that they unreasonably interfere with the rights of petitioners to deny or competing applicants with respect to EZ's pending renewal application. As reflected in Chronicle, a party has a right to reasonably investigate the qualifications of its opponent. 16 RR 2d at 1019. That right, however, becomes meaningless if an opponent has taken affirmative legal action to obstruct access to essential information, including public records. Actions which hinder public participation in the Commission's processes are contrary to the purpose of the Act to encourage such participation. Chronicle, supra; Fort Collins Broadcasting Co., Inc., 38 FCC 2d 707, 26 RR 2d 220, 225 (1972). Further, the settlement of the civil litigation between Ms. Randolph and EZ can provide no justification for erecting obstacles that are not designed to deter Ms. Randolph but are rather directed at other possible participants in Commission proceedings concerning EZ. Indeed, it is questionable whether a restriction even on Ms. Randolph's right to bring pertinent information to the Commission's attention could be squared with the public interest. WWOR-TV, Inc., 6 FCC Rcd 131 (ALJ 1991) at para. 64. It is wholly objectionable and abusive for a party to create obstructions under the guise of settling private litigation that are clearly intended to hinder participation in Commission

proceedings by members of the public unrelated to the litigation.

Finally, EZ's conduct raises a question as to whether EZ has violated Sections 73.3588 and 73.3589 of the Commission's Rules since the settlement agreement was never submitted to the Commission. In Section 73.3588 the Commission must pass upon any agreement for withdrawal of a petition to deny or an informal objection to a renewal application. Here, Ms. Randolph (See Attachment C) had filed a letter which she referred to as "formal notice" and "requesting that this letter be made part of the formal record in WBZZ's Application Renewal Request." The transcript of the settlement conference makes clear that Ms. Randolph was to withdraw the objection. Section 73.3589 of the Rules requires approval of agreements wherein one party agrees to refrain from filing a petition to deny or informal objection. Again, the settlement transcript makes clear that the agreement obligated Ms. Randolph from pursuing any such petition or objection. EZ thus compounded its attempt to conceal information by violation of Commission Rules.

IV. Relief Requested

EZ cannot be permitted to acquire a second station in Pittsburgh without evidentiary hearing on the following issues.

1. To determine whether in connection with station WBZZ, Pittsburgh, PA) EZ Communications, Inc. has engaged in sexual harassment and discrimination in employment based on sex in violation of Commission Equal Employment Opportunity Policy and Section 73.2080 of the Commission Rules;
2. To determine the impact on the character qualifications of EZ Communications, Inc. of the adjudications in American Arbitration Association Case No. 55-300-0064-88 and U.S. District Court, Western District of Pennsylvania Civ. Action 88-2636.
3. To determine whether EZ Communications, Inc. abused the Commission's processes and/or violated Sections 73.3588 and Section 73.3589 of the Commission's Rules in connection with the settlement of Cases No. GD88-02730 and GD 89-22010, Court of Common Pleas, Allegheny County of Pennsylvania.
4. To determine in light of the evidence addressed pursuant to the foregoing issues whether EZ Communications, Inc. is basically qualified to be a Commission licensee or to operate or acquire a second broadcast station in the Pittsburgh, PA market.

Respectfully submitted,

**ALLEGHENY COMMUNICATIONS GROUP,
INC.**

By Morton L. Berfield
Morton L. Berfield

Cohen and Berfield, P.C.
1129 20th Street, N.W., #507
Washington, D.C. 20036
(202) 466-8565

Date: October 18, 1993

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

**AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS - PITTSBURGH (AFTRA)**

and

EZ COMMUNICATIONS, INC., WBZZ FM

CASE NUMBER: 55-300-0064-88

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR(s), having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

The grievance is sustained. The grievant is to receive payment for all severance benefits to which she is entitled together with interest at the rate of 6% per annum from February 5, 1988.



Arbitrator's signature (dated)

STATE OF PENNSYLVANIA
COUNTY OF ALLEGHENY

ss:

On this 16th day of November, 19 88, before me personally

came and appeared **Ronald F. Talarico**

to me known and known to me to be the individual(s) described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

James P. Maguire

**JAMES P. MAGUIRE, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES JUNE 21, 1990**

Member, Pennsylvania Association of Notaries

IN THE MATTER OF THE ARBITRATION)

OPINION AND AWARD

Between)

AMERICAN FEDERATION OF
TELEVISION AND RADIO
ARTISTS - PITTSBURGH (AFTRA)

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)
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)
RONALD F. TALARICO
ARBITRATOR

and)

EZ COMMUNICATIONS, INC.
WBZZ-FM)

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)
)
AMERICAN ARBITRATION ASSOC.
CASE NUMBER: 55-300-0064-88

GRIEVANT

ELIZABETH RANDOLPH

ISSUE

PAYMENT OF SEVERANCE BENEFITS

HEARING

August 19, 1988
Pittsburgh, Pennsylvania

BRIEFS SUBMITTED

November 2, 1988

APPEARANCES

For the Union

Samuel P. Kamin, Esquire
Terry L. Jordan, Esquire

For the Employer

Stephen H. Jordan, Esquire